

**UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO**

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In re:	PROMESA
	Title III
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,	No. 17 BK 3283-LTS
as representative of	(Jointly Administered)
THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i> ,	<b>RE: ECF No. 3427</b>
Debtors. <sup>1</sup>	

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**STATEMENT IN RESPONSE TO MOTION OF THE INDEPENDENT INVESTIGATOR  
FOR AN ORDER: (I) ESTABLISHING PROCEDURES FOR RESOLVING ANY  
CONFIDENTIALITY DISPUTE IN CONNECTION WITH PUBLICATION OF THE  
INDEPENDENT INVESTIGATOR’S FINAL REPORT; (II) APPROVING THE  
DISPOSITION OF CERTAIN DOCUMENTS AND INFORMATION; (III) RELIEVING  
THE INDEPENDENT INVESTIGATOR FROM CERTAIN DISCOVERY  
OBLIGATIONS; (IV) EXCULPATING THE INDEPENDENT INVESTIGATOR IN  
CONNECTION WITH THE INVESTIGATION AND PUBLICATION OF THE FINAL  
REPORT; AND (V) GRANTING RELATED RELIEF**

To the Honorable United States District Court Judge Laura Taylor Swain:

The Commonwealth of Puerto Rico (the “Commonwealth”), the Puerto Rico Sales Tax Financing Corporation (“COFINA”), the Puerto Rico Highways and Transportation Authority (“HTA”), the Employees Retirement System of the Government of the Commonwealth of Puerto

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<sup>1</sup> The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566- LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Rico (“ERS”), and the Puerto Rico Electric Power Authority (“PREPA,” and together with the Commonwealth, COFINA, HTA, and ERS the “Debtors”), as Title III debtors, by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the Debtors’ representative pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”), hereby submit this Statement in response to the *Motion of the Independent Investigator for an Order: (I) Establishing Procedures for Resolving any Confidentiality Dispute in Connection with Publication of the Independent Investigator’s Final Report; (II) Approving the Disposition of Certain Documents and Information; (III) Relieving the Independent Investigator from Certain Discovery Obligations; (IV) Exculpating the Independent Investigator in Connection with the Investigation and Publication of the Final Report; and (V) Granting Related Relief* [ECF No. 3427] (the “Motion”),<sup>2</sup> and respectfully state as follows:

### **STATEMENT**

The Oversight Board supports the relief requested in the Motion, and writes to clarify the application of the Access Procedures to the Oversight Board. As described in the Motion, the Oversight Board, acting by and through the Special Investigation Committee, retained the Independent Investigator to conduct the Investigation, pursuant to its statutory authority under PROMESA section 104(o). Motion at ¶¶ 17, 55. The Oversight Board directed the Special Investigation Committee to oversee the Investigation in order to maintain the integrity and independence of the Investigation while it was ongoing.

The Oversight Board, as the representative of the Debtors, will control and be solely responsible for initiating any claims on behalf of the Title III debtors for the benefit of creditors

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

and parties in interest in these Title III cases, among other rights and obligations. *See* PROMESA Section 315(b) (“The Oversight Board in a case under this title [III] is the representative of the debtor.”); PROMESA section 301(c)(7) (replacing “trustee” with “Oversight Board” wherever such term is used in title 11 sections incorporated into PROMESA); *see also, e.g., DiMaio Family Pizza & Luncheonette, Inc. v. Charter Oak Fire Ins. Co.*, 448 F.3d 460, 463 (1st Cir. 2006) (“‘[A]ll legal or equitable interests . . . in property as of the commencement of the case’ and ‘any interest in property that the estate acquire[d] after the commencement of the case’ became the property of their respective bankruptcy estates” and “their bankruptcy trustees acquired exclusive standing to assert those claims.”) (quoting 11 U.S.C. § 541(a)(1), (7)).

The Oversight Board intends to designate a separate special committee to review the Final Report and determine whether any further steps are necessary based upon the findings in the Final Report, including, but not limited to, evaluating and initiating claims on behalf of any of the Title III debtors for the benefit of creditors and parties in interest in the Title III cases (the “Special Litigation Committee”). It is expected that the Special Litigation Committee will consult with the two statutory committees regarding potential claims. The Special Litigation Committee’s access to any materials contained in the Document Depository will be procured either by seeking consent of the party that produced the materials sought by the Special Litigation Committee or by seeking court approval.

The documents produced in the Investigation are essential to allow the Oversight Board to fulfill its statutory duties. Accordingly, the Oversight Board notes that the Special Investigation Committee has now, and will continue to have through publication of the Final Report and the cooperation period described in Paragraph 51 of the Motion, full access to the

Investigative Record, the Final Report Documents, and any and all documents contained in the Document Depository, or otherwise produced pursuant to the Investigation, without having to seek and obtain prior court approval.

Dated: July 20, 2018  
San Juan, Puerto Rico

Respectfully submitted,

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